

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

FELICIA D. TENNESSEE,

Plaintiff,

v.

Civil Action No.: 2:10cv167

MURPHY-BROWN, L.L.C.,

Defendant.

**DEFENDANT’S MEMORANDUM IN SUPPORT OF  
MOTION IN LIMINE TO PREVENT ANY REFERENCE TO DEFENDANT’S  
AFFILIATION WITH SMITHFIELD FOODS, INC.**

Defendant is a wholly owned subsidiary of Smithfield Foods, Inc.; however, Defendant files this Motion in Limine to ask the Court to prevent Plaintiff from referencing this affiliation.

Rule 402 of the Federal Rules of Evidence expressly excludes evidence that is not relevant. Fed. R. Evid. 402. In order for evidence to be relevant it must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Fed. R. Evid. 401.

Any reference to Smithfield Foods, Inc. is wholly irrelevant to Plaintiff’s claims of harassment and retaliation. Plaintiff has made no allegations that could possibly trigger the need for an “alter ego” analysis. Further, Defendant is sufficiently large, in and of itself, to be covered by the \$300,000 damages cap of 42 U.S.C. § 1981a. Uniting Defendant with Smithfield Foods, Inc. does not affect the applicable damage limitations.

Even if Defendant’s affiliation with Smithfield Foods, Inc. was relevant – which it is not – Rule 403 of the Federal Rules of Evidence provides that relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403.

Here, evidence of Defendant’s affiliation with Smithfield Foods, Inc. has absolutely no probative value to Plaintiff’s claims. A larger entity is no more or less prone to violate Title VII than a smaller entity and, as mentioned above, there has been no allegation asserted that would trigger the need for an alter ego analysis. On the flip side, the introduction of this evidence would raise substantial risks of jury confusion and unfair prejudice. For example, such evidence would suggest to jurors that Defendant is a larger entity with deeper pockets that it actually has.

With no probative value and substantial risk for confusion and prejudice, this Court should prevent Plaintiff from introducing evidence of Defendant’s affiliation with Smithfield Foods, Inc.

### CONCLUSION

For the reasons set forth above, Defendant asks this Court to grant its motion in limine and prevent Plaintiff from referencing Defendant’s affiliation with Smithfield Foods, Inc.

MURPHY-BROWN, LLC

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of October 2011, a true copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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